

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

FRANK E. GABLE.

Petitioner,

v.

MAX WILLIAMS,

Respondent.

ACOSTA, Magistrate Judge.

Based on the Record,

For these reasons, Gable's Amended Petition for Writ of Habeas Corpus (ECF No. 61) is GRANTED IN PART and DENIED IN PART. The Amended Petition is GRANTED on the bases that the trial court erred in excluding evidence of third-party guilt and that trial counsel provided ineffective assistance in failing to assert Gable's federal due process rights in the face of the trial court's error. The Amended Petition is DENIED on the remaining claims for relief, including

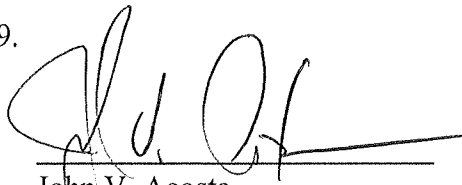
Case No. 3:07-cv-00413-AC

JUDGMENT

Gable's claim that trial counsel was ineffective in failing to advise Gable of his *ex post facto* rights and in failing to raise an *ex post facto* objection to the sentencing options at the penalty phase, as well as Gable's free-standing claim of actual innocence.

Gable shall be released from custody unless the State of Oregon elects to retry him within 90 days of the date of this order. A certificate of appealability is GRANTED as to all grounds for relief discussed herein on the basis that Gable has made a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2).

DATED this 18<sup>th</sup> day of April, 2019.

  
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John V. Acosta  
United States Magistrate Judge